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U.S. DISTRICT COURT  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

WILSON RUIZ-SULSONA,

Plaintiff  
v.

UNIVERSITY OF PUERTO RICO;  
DIANA RUIZ-GÓMEZ;  
COMMONWEALTH OF PUERTO  
RICO; PEDRO N. GONZÁLEZ-  
CORDERO; LUIS R. CRESPO-BELLO;  
FERNANDO NERIS-FLORES;  
MIGUEL GONZÁLEZ-VALENTÍN;  
JOHN DOE; RICHARD DOE,

CIVIL 98-1758 (JAG)

Defendants

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

This matter is before the court on motion for summary judgment filed by all defendants. (Docket No. 33.) The plaintiff Wilson Ruiz-Sulsona (hereinafter "Ruiz-Sulsona") filed an opposition to the defendants' motion for summary judgment on July 12, 2001. (Docket No. 46.) On August 6, 2001, the defendants filed a reply to plaintiff's opposition to defendants' motion for summary judgment. (Docket No. 52.) Then, on September 18 and December 3, 2001, plaintiff replied to the defendants' August 6 motion. (Docket Nos. 57, 58.)

I. Factual Background

On June 30, 1998, plaintiff Ruiz-Sulsona, a contracted professor at the University of Puerto Rico, Aguadilla Campus, and an active member of the New Progressive Party (PNP), filed a complaint asserting that defendants discriminated against him because of his political affiliation. (Docket No. 33.) Plaintiff Ruiz-Sulsona basis his claim on: (1) the Civil Rights Act, 42 U.S.C. § 1983, for deprivation of his rights under the First Amendment

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3 of the Constitution of the United States; (2) the Due Process Clause of the Fourteenth  
4 Amendment, for deprivation of his rights under such clause; (3) Puerto Rico's Anti-  
5 discrimination Law, Law 100 of June 30, 1959, 29 P.R. Laws Ann. § 146 et seq.; (4) Puerto  
6 Rico's Personnel Law, Law 5 of October 14, 1975, 3 P.R. Laws Ann. § 1301 et seq.; (5)  
7 Puerto Rico's Law on Interference with Political Affiliation, Law 382 of May 11, 1950, 29  
8 P.R. Laws Ann. § 136; and (6) individual rights under Puerto Rico's Constitution, P.R.  
9 Const. art. II, §§ 1, 4, 6, and 7. (Docket No. 33.)

10 Plaintiff contends that defendant Diana Ruiz-Gómez, Director of the Department  
11 of Business Administration at the University of Puerto Rico's Aguadilla Campus, and well  
12 known for her affiliation to the Popular Democratic Party (PPD), along with the other  
13 defendants, personally and willfully persecuted, harassed and discriminated against him for  
14 his political affiliation, therefore violating his constitutional and statutory rights. Ruiz-  
15 Sulsona also claims, that said actions by the defendants intentionally caused him to receive  
16 a poor evaluation from his department, which ultimately led the Personnel Committee to  
17 deny the renewal of his contract. (Docket No. 3.) Defendants request that plaintiff's  
18 claims be dismissed since his uncontested facts show that no real genuine issue of material  
19 facts exists, and that they are entitled to judgment as a matter of law. (Docket No. 33.)

## 20 II. Summary Judgment Standard

21 Summary judgment is entered only when "the pleadings, depositions, answers to  
22 interrogatories, and admissions on file, together with the affidavits, if any, show that there  
23 is no genuine issue as to any material fact and that the moving party is entitled to a  
24 judgment as a matter of law." Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S.  
25 317, 322 (1986); Straughn v. Delta Air Lines, Inc., 250 F.3d 23, 33 (1<sup>st</sup> Cir. 2001); see  
26 Abbadessa v. Moore Bus. Forms, Inc., 987 F.2d 18, 22 (1<sup>st</sup> Cir. 1993). To find in favor of  
27 the defendants, this court "must view the entire record in the light most hospitable to the  
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3 party opposing summary judgment, indulging all reasonable inferences in that party's  
4 favor." Suárez v. Pueblo Int'l, Inc., 229 F.3d 49, 53 (1<sup>st</sup> Cir. 2000); see also Pérez v. Volvo  
5 Car Corp., 247 F.3d 303, 310 (1<sup>st</sup> Cir. 2001); Griggs-Ryan v. Smith, 904 F.2d 112, 115 (1<sup>st</sup>  
6 Cir. 1990).

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8 In a motion for summary judgment, the moving party must demonstrate "an absence  
9 of evidence to support the nonmoving party's case" to discharge its burden of proof.  
10 Celotex Corp. v. Catrett, 477 U.S. at 325. Then the nonmoving party adopts the burden  
11 of showing that there is a factual disagreement. "[T]o defeat a properly supported motion  
12 for summary judgment, the nonmoving party must establish a trial-worthy issue by  
13 presenting 'enough competent evidence to enable a finding favorable to the nonmoving  
14 party.'" Hidalgo v. Overseas Condado Ins. Agencies, Inc., 120 F.3d 328, 332 (1<sup>st</sup> Cir.  
15 1997) (quoting Leblanc v. Great Am. Ins. Co., 6 F.3d 836, 842 (1<sup>st</sup> Cir. 1993), cert.  
16 denied., 511 U.S. 1018 (1994)). Plaintiff may not rely on "conclusory allegations,  
17 improbable inferences, and unsupported speculation." Pagano v. Frank, 983 F.2d 343, 347  
18 (1<sup>st</sup> Cir. 1993) (citing Medina-Muñoz v. R.J. Reynolds Tobacco Co., 896 F.2d 5, 8 (1<sup>st</sup> Cir.  
19 1990)); see Burns v. State Police Ass'n of Massachusetts, 230 F.3d 8, 9 (1<sup>st</sup> Cir. 2000).  
20 Only at this point does the court construe material facts and reasonable inferences in favor  
21 of the nonmoving party. Domínguez v. Eli Lilly & Co., 958 F. Supp. 721, 727 (D.P.R.  
22 1997), aff'd, 141 F.3d 1149 (1<sup>st</sup> Cir. 1998).

23 In the District Court of Puerto Rico, Local Rule 311.12, requires a motion for  
24 summary judgment to be accompanied by a separate, short and concise statement of  
25 material facts that supports the moving party's claim that there are no genuine issues of  
26 material fact in dispute. These facts are then deemed admitted until the nonmoving party  
27 provides a similarly separate, short and concise statement of material fact establishing that  
28 there is a genuine issue in dispute. Local Rules, United States District Court for the

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District of Puerto Rico, Local Rule 311(12) (Michie 1996); see Morales v. A.C. Orsleff's EFTE, 246 F.3d 32, 33 (1<sup>st</sup> Cir. 2001); Ruiz Rivera v. Riley, 209 F.3d 24, 26 (1<sup>st</sup> Cir. 2000); Domínguez v. Eli Lilly & Co., 958 F. Supp. at 727; see also Corrada Betances v. Sea-Land Serv., Inc., 248 F.3d 40, 43 (1<sup>st</sup> Cir. 2001). These facts must be supported by specific reference to the record, thereby pointing the court to any genuine issues of material fact and eliminating the problem of the court having to "ferret through the Record." Domínguez v. Eli Lilly & Co., 958 F. Supp. at 727; see Stepanischen v. Merchants Despatch Transp. Corp., 722 F.2d 922, 930-31 (1<sup>st</sup> Cir. 1983); Carmona Ríos v. Aramark Corp., 139 F. Supp. 2d 210 (D.P.R. 2001); Velázquez Casillas v. Forest Lab., Inc., 90 F. Supp. 2d 161, 163 (D.P.R. 2000). Failure to comply with this rule may result, where appropriate, in judgment in favor of the opposing party. Morales v. A.C. Orsleff's EFTE, 246 F.3d at 33; Stepanischen v. Merchants Despatch Transp. Corp., 722 F.2d at 927.

### III. Analysis

#### A. Civil Rights Violation Claim Under 42 U.S.C. § 1983

A claim under section 1983 has two essential elements. First, the challenged conduct must be attributable to a person acting under color of law; second, the conduct must have worked a denial of rights secured by the Constitution or by federal law. Soto v. Flores, 103 F.3d 1056, 1061 (1<sup>st</sup> Cir.), cert. denied, 522 U.S. 819 (1997); see also DiMarco-Zappa v. Cabanillas, 238 F.3d 25, 33 (1<sup>st</sup> Cir. 2001); Barrios-Velázquez v. Asociación de Empleados del Estado Libre Asociado de Puerto Rico, 84 F.3d 487, 491 (1<sup>st</sup> Cir. 1996); Willhauck v. Halpin, 953 F.2d 689, 703 (1<sup>st</sup> Cir. 1991) (citing Golden State Transit Corp. v. Los Angeles, 493 U.S. 103, 105-108 (1989)); Rodríguez-Vázquez v. Cintrón-Rodríguez, 160 F. Supp. 2d 204, 209 (D.P.R. 2001). The second element requires the plaintiff to prove not only a deprivation of federal right, but also that the defendant's conduct was a cause in fact of the alleged deprivation. Soto v. Flores, 10 F.3d at 1062.

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3 This may consist of direct acts by the defendant, certain acts performed at defendant's  
4 direction, or knowledge and consent. Rodriguez-Vázquez v. Cintrón-Rodríguez, 160 F.  
5 Supp. 2d at 210.

6 To survive summary judgment in a case alleging unconstitutional political  
7 discrimination in public employment, an employee must produce evidence that [their]  
8 political affiliation was a "substantial" or "motivating" factor behind the challenged  
9 employer's decision. Báez-Cruz v. Municipality of Comerío, 140 F.3d 24, 28 (1<sup>st</sup> Cir.  
10 1998); see also Acevedo-Díaz v. Aponte, 1 F.3d 62, 67 (1<sup>st</sup> Cir. 1993); Ramos-Biaggi v.  
11 Martínez, 98 F. Supp. 2d 171, 175 (D.P.R. 2000). Plaintiff has to outline sufficient facts  
12 to demonstrate specific instances of unlawful discrimination. Rodríguez-Vázquez v.  
13 Cintrón-Rodríguez, 160 F. Supp. 2d at 208. In addition, plaintiff must allege minimal  
14 facts, not subjective characterizations, as to who did what to whom and why. Dewey v.  
15 University of New Hampshire, 694 F.2d 1, 3 (1<sup>st</sup> Cir. 1982), cert. denied, 461 U.S. 944  
16 (1983). If plaintiff fails to produce evidence of unlawful discrimination, then the court has  
17 no reason to overturn the employer's decision. Village of Arlington Heights v.  
18 Metropolitan Hous. Dev. Corp., 429 U.S. 252, 270-71 (1977).

19 Plaintiff sets forth that defendants Pedro N. González-Cordero, Fernando Neris-  
20 Flores, Luis R. Crespo-Bello and/or Diana Ruiz-Gómez, harassed him due to his political  
21 ideas, his support to Governor Pedro Rosselló and/or his affiliation to the N.P.P. (Docket  
22 No. 46, Plaintiff's Statement of Uncontested Facts, ¶ 6.) Plaintiff sets forth that on  
23 September 19, 1996, defendants Diana Ruiz-Gómez and Pedro N. González-Cordero,  
24 willfully and intentionally evaluated plaintiff's performance in bad faith with the intention  
25 of harming him because of his political affiliation. (Docket No. 46, Plaintiff's Statement  
26 of Uncontested Facts, ¶ 8.) Ruiz-Sulsona argues that defendant Diana Ruiz-Gómez in bad  
27 faith and with the purpose of harassing him, notified him of an evaluation with very little  
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3 time for him to prepare himself. (Docket No. 46, Plaintiff's Statement of Uncontested  
4 Facts, ¶ 7.) Ruiz-Sulsona also claims that the defendants created, incited, allowed and/or  
5 tolerated a politically discriminating harassing work environment against the plaintiff.  
6 (Docket No. 46, Plaintiff's Statement of Uncontested Facts, ¶ 15.)

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8 Plaintiff in his own deposition admitted to have no claim of political discrimination  
9 against defendant Miguel González-Valentín. See Transcript of Plaintiff's Deposition of  
10 December 28, 2000, Exhibit 3, at 42. He also states that defendant Crespo-Bello had  
11 retired a year prior to the date that plaintiff's contract had expired. See Exhibit 3, at 11.  
12 As to defendant Diana Ruiz-Gómez, Ruiz-Sulsona recounts an incident that took place  
13 more than eight months before plaintiff's contract had expired and since then, no other  
14 incident of that same nature has taken place. See Exhibit 3, at 47. The claims against  
15 defendant Fernando Neris-Flores are based on several comments made by him in reference  
16 to Governor Rosselló and his administration, that took place in the presence of Ruiz-  
17 Sulsona. Finally, as to defendant Pedro N. González-Cordero, the claims are based on  
18 jokes and comments made by the same, also regarding Governor Rosselló and his  
19 administration that took place in October 1996. See Exhibit 3, at 44-45.

20 These claims are based solely on plaintiff's own conclusions and appreciation of  
21 defendants' actions towards him. Plaintiff's claims fail to establish that plaintiff's political  
22 affiliation was a motivating factor behind the personnel's decision not to renew his  
23 contract. The record's lack of specific evidence that could raise doubt about defendants'  
24 actions being politically motivated, makes plaintiff's claim under 42 U.S.C. § 1983  
25 unwarranted.

#### 26 B. Plaintiff's Property Interest in His Employment

27 Defendants also claim that plaintiff has not been deprived of a constitutionally  
28 cognizable property interest. (Docket No. 33.) Plaintiff, on the other hand, contends that



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3 his rights under the Due Process Clause of the Fourteenth Amendment of the United States  
4 Constitution were violated. (Docket No. 3.)

5 Under the Due Process Clause of the Fourteenth Amendment, persons who possess  
6 a property interest in continued public employment cannot be deprived of that interest  
7 without due process of law. Figueroa-Serrano v. Ramos-Alverio, 221 F.3d 1, 5 (1<sup>st</sup> Cir.  
8 2000); see also Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985); Rivera-Flores  
9 v. Puerto Rico Tel. Co., 64 F.3d 742, 750 (1<sup>st</sup> Cir. 1995). To establish a procedural due  
10 process claim under 42 U.S.C. § 1983, plaintiff must allege, first that he has a property  
11 interest and second, that he was deprived of that property interest without a due process  
12 of law. Logan v. Zimmerman Brush Co., 455 U.S. 422, 428 (1982). If the employee  
13 proves that he or she possess a property interest, then they have an opportunity to defend  
14 themselves against the personnel decision. Figueroa-Serrano v. Ramos-Alverio, 221 F.3d  
15 at 5; see also Keradó-Meléndez v. Aponte-Ramos, 829 F.2d 255, 263 (1<sup>st</sup> Cir. 1987), cert.  
16 denied, 486 U.S. 1044 (1988). The existence of a property interest in continued  
17 employment depends upon whether it was reasonable for the employee to believe, based  
18 upon either statute or employment contract, that he could rely on continued employment.  
19 Ortiz-Piñero v. Rivera-Acevedo, 900 F. Supp. 574, 581 (D.P.R. 1995); see also Portela-  
20 González v. Secretary of Navy, 913 F. Supp. 122, 127 (D.P.R. 1996), aff'd, 109 F.3d 74  
21 (1<sup>st</sup> Cir. 1997). Under Puerto Rico law and First Circuit's precedent interpreting the  
22 Commonwealth's law, "transitory employees generally do not have a property interest in  
23 continued employment beyond the yearly term of the appointment." Pagán-Cuevas v. Vera  
24 Monroig, 91 F. Supp. 2d 464, 471 (D.P.R. 2000) (citing Nieves-Villanueva v. Soto-Rivera,  
25 133 F.3d 92, 94 (1<sup>st</sup> Cir. 1994) (citing Caro v. Aponte-Roque, 878 F.2d 1, 4-5 (1<sup>st</sup> Cir.  
26 1989)); Ortiz-Piñero v. Rivera-Acevedo, 900 F. Supp. 574, 582 (D.P.R. 1995), aff'd, 84  
27 F.3d 7 (1<sup>st</sup> Cir. 1996).  
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3 Plaintiff was hired by the University of Puerto Rico on August 19, 1995, under a  
4 Service Contract and as a part-time instructor at the Department of Business  
5 Administration. (Docket No. 46, Plaintiff's Statement of Uncontested Facts, ¶ 1). A  
6 service contract is used by the University to hire persons to teach those courses that have  
7 not yet been assigned to a regular permanent professor. This type of contract is also for a  
8 determined period of time. (Docket No. 33, Defendant's Statement of Uncontested Facts,  
9 Exhibit 2.) Temporary appointments also have a fixed term which cannot exceed a year.  
10 (Docket NO. 33, Defendant's Statement of Uncontested Facts, ¶ 5.) Occupying a  
11 temporary appointment and a service contract with the University of Puerto Rico, Ruiz-  
12 Sulsona does not have a legitimate expectation of continued employment nor a property  
13 interest in the same. Thus, plaintiff's due process claim cannot prevail.

14 C. Plaintiff's Claim are Time Barred by the Statute of Limitations

15 The limitations period for a cause of action under 42 U.S.C. § 1983 claim is the state  
16 statute of limitations for personal injury actions. Carreras-Rosa v. Alves-Cruz, 127 F.3d  
17 172, 174 (1<sup>st</sup> Cir. 1997). In Puerto Rico the applicable limitation period for tort actions  
18 is one year. Id. See 3 P.R. Laws Ann. § 5298 (2). The accrual period for a section 1983  
19 action "ordinarily starts when the plaintiff knows, or has reason to know, of the injury on  
20 which the action is based." Carreras-Rosa v. Alves-Cruz, 127 F.3d at 174 (citing Rivera-  
21 Muriente v. Agosto-Alicea, 959 F.2d 349, 353 (1<sup>st</sup> Cir. 1992)).

22 It is an uncontested fact the plaintiff Ruiz-Sulsona was notified on two occasions  
23 about the expiration of his contract, on May 8, 1997 and on May 15, 1997. (Docket No.  
24 33, Defendant's Statement of Uncontested Facts, Exhibit 1.) Plaintiff in his own  
25 deposition stated that he was aware that his contract was not going to be renewed for the  
26 next semester at the time he received both notifications. (Docket No. 33, Defendant's  
27 Memorandum in Support of Motion for Summary Judgment, Exhibit 2, at 23, ¶ 5.) Prior  
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3 to that time, according to plaintiff, he was aware that the reason for the non-renewal was  
4 politically motivated. Consequently, the accrual period started either on May 8 or May 15,  
5 1997 but certainly not on June 30, 1997, when plaintiff's contract expired. As a result,  
6 plaintiff's claim against all defendants is time barred since his complaint was filed on June  
7 30, 1998. (Docket No. 1.)

8 D. Supplemental Claims Must Also be Dismissed Due to Absence of Any Cognizable Basis  
9 for Federal Jurisdiction

10 The assertion of supplemental jurisdiction over state law claims is within the federal  
11 court's discretion. Méndez-Marrero v. Toledo, 968 F. Supp. 27, 34 (D.P.R. 1997); see also  
12 O'Connor v. Commonwealth Gas Co., 251 F.3d 262, 273 (1<sup>st</sup> Cir. 2001); Pejepscot Indus.  
13 Park, Inc. v. Maine Cent. R. Co., 215 F.3d 195, 206 (1<sup>st</sup> Cir. 2000). If the federal claims  
14 are dismissed before trial, however, the state law claims should also be dismissed.  
15 Rodríguez v. Doral Mortgage Corp., 57 F.3d 1168, 1177 (1<sup>st</sup> Cir. 1995). Therefore,  
16 plaintiff's claims under P.R. Laws Ann. 5, 100 and 382 should also be dismissed.

17 In view of the above, I recommend that summary judgment be GRANTED in favor  
18 of all defendants and that the case be dismissed in its entirety.

19 Under the provisions of Rule 510.2, Local Rules, District of Puerto Rico, any party  
20 who objects to this report and recommendation must file a written objection thereto with  
21 the Clerk of this Court within ten (10) days of the party's receipt of this report and  
22 recommendation. The written objections must specifically identify the portion of the  
23 recommendation, or report to which objection is made and the basis for such objections.  
24 Failure to comply with this rule precludes further appellate review. See Thomas v. Arn, 474  
25 U.S. 140, 155 (1985), reh'g denied, 474 U.S. 1111 (1986); Davet v. Maccorone, 973 F.2d  
26 22, 30-31 (1<sup>st</sup> Cir. 1992); Paterson-Leitch Co. v. Massachusetts Mun. Wholesale Elec. Co.,  
27 840 F.2d 985 (1<sup>st</sup> Cir. 1988); Borden v. Secretary of Health & Human Servs., 836 F.2d 4,  
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3 6 (1<sup>st</sup> Cir. 1987); Scott v. Schweiker, 702 F.2d 13, 14 (1<sup>st</sup> Cir. 1983); United States v.  
4 Vega, 678 F.2d 376, 378-79 (1<sup>st</sup> Cir. 1982); Park Motor Mart, Inc. v. Ford Motor Co., 616  
5 F.2d 603 (1<sup>st</sup> Cir. 1980).

6 At San Juan, Puerto Rico, this 8<sup>th</sup> day of February, 2002.

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10 JUSTO ARENAS  
United States Magistrate Judge  
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